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FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 09L-07

DATE OF REFERRAL: March 23, 2009

DATE ACTIVATED: April 16, 2009

EXPIRATION OF SOL: September 12, 2011
(earliest), November 6, 2011 (latest)

SOURCE:

INTERNALLY GENERATED

RESPONDENTS:

National Right to Life Political Action Committee
and Carol Tobias, in her official capacity as
treasurer

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 434(b)
2 U.S.C. § 434(g)
11 C.F.R. § 104.3
11 C.F.R. § 104.4
11 C.F.R. § 104.11
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

Disclosure Reports
RAD Referral Materials

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred National Right to Life Political Action Committee and Carol Tobias, in her official capacity as treasurer,¹ ("the Committee") to this Office for apparent violations occurring during the 2006 election cycle. As described below, these apparent violations include the Committee's failure to: file or timely file 24 and 48-Hour Notices of independent expenditures, file accurate Schedules D and E, continuously report

¹ According to available sources, Ms. Natividad served as treasurer from July 31, 1991 to September 3, 2008. Following her resignation, the Committee filed an amended Statement of Organization on September 4, 2008, naming Carol Tobias as treasurer.

1 outstanding debts, and other reporting errors relating to independent expenditures. The reporting
2 inaccuracies identified during this period stem from two election-sensitive reports, the
3 Committee's 2006 October Quarterly and 2006 12 Day Pre-General Reports, as well as the 2006
4 30 Day Post-General and 2006 Year-End Reports and subsequent amendments to these reports.
5 In its response to the notice of referral, the Committee acknowledged the errors. Accordingly,
6 we recommend that the Commission find reason to believe that National Right to Life Political
7 Action Committee and Carol Tobias, in her official capacity as treasurer, violated 2 U.S.C.

8 §§ 434(b) and 434(g),

9 II. DISCUSSION

10 A. Failure to File or Timely File Notices of Independent Expenditures

11
12 An independent expenditure is an expenditure for a communication that expressly
13 advocates the election or defeat of a clearly identified candidate, and is not coordinated with a
14 candidate, candidate's committee, party committee or their agents. 2 U.S.C. § 431(17). The Act
15 permits political committees such as the Committee to make unlimited independent expenditures,
16 but they are required to disclose those expenditures to the public through timely reports filed
17 with the Commission if, in aggregate, they exceed \$250. 2 U.S.C. § 434(c); 11 C.F.R.
18 §§ 100.16, 104.4(g), 109.10; *Buckley v. Valeo*, 424 U.S. 1, 45 (1976). Such expenditures, when
19 added to other independent expenditures made to the same payee during the same calendar year
20 that exceed \$200, shall be reported on Schedule E. 11 C.F.R. §§ 104.3 (b)(3)(vii) and 104.4(a).
21 Independent expenditures made (*i.e.*, publicly disseminated) prior to payment should be
22 disclosed on Schedule E and as a reportable debt on Schedule D with a statement ("memo")
23 explaining the circumstances and conditions under which each debt and obligation was incurred
24 or extinguished. 11 C.F.R. § 104.11.

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1 The Commission must receive a political committee's reports of independent
2 expenditures within 24 or 48 hours, whichever is applicable, of the date that the independent
3 expenditure is publicly distributed or otherwise disseminated. 11 C.F.R. §§ 104.4(f) and
4 104.5(g)(2). Any independent expenditures aggregating \$1,000 or more, with respect to any
5 given election, and made after the 20th day but more than 24 hours before the day of an election
6 must be reported and the report must be received by the Commission within 24 hours after the
7 expenditure is made. 2 U.S.C. § 434(g)(1)(A). A 24-hour notice is required for each additional
8 \$1,000 that aggregates. 2 U.S.C. § 434(g)(1)(B). Any independent expenditure aggregating
9 \$10,000 or more with respect to any given election, at any time during a calendar year, up to and
10 including the 20th day before an election, must disclose this activity within 48 hours each time
11 that the expenditures aggregate \$10,000 or more. 2 U.S.C. § 434(g)(2).

12 Based on its review of the three reports discussed below, RAD identified 109 24-or 48-
13 Hour notices of 288 independent expenditures totaling \$226,401.86 that were not filed or not
14 timely filed. Indeed, as shown below, the Committee failed to file Notices for 274 of the 288
15 independent expenditures at issue.

16 **Table One: Untimely Filed or Non-Filed 24 and 48-Hour Notices**

24-Hour	2006 October Quarterly Report	14	5	\$26,372.13
48-Hour	2006 12 Day Pre- General Report	36 (none filed)	12	\$49,535.15
24-Hour	2006 Post General Report	238 (none filed)	92	\$150,494.58
	<i>Totals</i>	288	109	\$226,401.86

1. 24-Hour Notices Stemming from the 2006 October Quarterly Report

On January 31, 2007, RAD sent the Committee a Request for Additional Information ("RFAI") noting that it either failed to file or untimely filed 24-Hour Notices for 14 independent expenditures totaling \$26,372.13 that were disclosed on its 2006 October Quarterly Report, which covered the period from July 1, 2006 through September 30, 2006 and was initially filed on October 15, 2006. RAD Referral at 3. See Table One. Of these expenditures, the Committee failed to file three 24-Hour Notices to support eight independent expenditures totaling \$11,557.10, and untimely filed two Notices to support six independent expenditures totaling \$14,815.03 filed after the 2006 Congressional primary elections in Michigan and Nevada. *Id.* The Committee disclosed six independent expenditures totaling \$14,815 on Schedule E of the 2006 October Quarterly Report, with reported dates of July 20, 2006 and July 26, 2006, respectively. The Committee, however, did not file Notices for these independent expenditures until September 7, 2006 and September 14, 2006, respectively.

On March 22, 2007, Robin Sexton, a consultant for the Committee, contacted the RAD analyst via telephone, explaining that the 24-Hour Notices were filed late because the staff in the field making the independent expenditures did not inform the Committee's national office of the independent expenditures in a timely manner. RAD Referral at 4, Attachment 16. While acknowledging that there was no way to rectify the late filing of notices, Ms. Sexton stated that the Committee would provide further explanation in a Miscellaneous Electronic Submission. *Id.* On March 22, 2007, the Committee formally responded to the RFAI with a Form 99, which stated in part:

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1 While we are aware of the requirements for filing 24-hour notices
2 and make every endeavor to comply with the law, periodically the
3 information is not provided to our accounting staff in the appropriate
4 timeframe to ensure these reports are filed timely. We have instituted
5 practices to help us report these expenditures in a timely fashion and
6 will continue to encourage stricter controls on these expenditures.
7 For those we have missed, we will file notices in the next few days.
8 Though they will not be timely, it will show as a good-faith effort to
9 comply with the law, which is our goal.

10
11 RAD Referral at 4. On March 23, 2007, the Committee filed two 24-Hour Notices disclosing
12 eight independent expenditures totaling \$11,557.10 for the 2006 Congressional primary elections
13 that had not been filed during the 2006 election cycle.² In sum, the Committee failed to timely
14 file five 24-Hour Notices for 14 independent expenditures totaling \$26,372.13.

15 **2. 48-Hour Notices Stemming from the 2006 12 Day Pre-General Report**

16 On October 17, 2007, RAD sent the Committee a RFAI referencing the 2006 12 Day Pre-
17 General Report, stating, among other things, that the Committee may have failed to file 48-Hour
18 Notices for thirty-three independent expenditures totaling \$44,326.67. *Id.* at 5. The
19 Committee's amendments to this Report, filed on December 18, 2007, and May 2, 2008,
20 however, did not address these 48-Hour Notices, nor did the Committee otherwise respond to the
21 October 17, 2007, RFAI concerning this issue. *Id.* at 6,7.

22 On April 24, 2008, after discussions with RAD regarding the amendment of its 2005-
23 2006 Reports, Ms. Sexton called RAD to discuss the Committee's continuing failures to timely
24 file 24-and-48-Hour Notices. In that conversation, Ms. Sexton explained that "the Committee
25 was trying to establish procedures for the staff coordinating the independent expenditures to file
26 the notices themselves rather than sending them to [then treasurer] Ms. Natividad to file, but that

² For example, while numerous independent expenditures were disclosed as made on August 4, 2006 on Schedule E of the Committee's 2006 October Quarterly Report, the Committee did not file Notices for these expenditures until March 23, 2007, several months later.

1 the employees did not seem willing to take that responsibility." RAD Referral at 7, Attachment
2 16. Thereafter, on July 2, 2008, RAD sent the Committee a RFAI, referencing the Committee's
3 May 2, 2008 amendment, and identified an additional three independent expenditures totaling
4 \$5,208.48 for which 48-Hour Notices had not been filed. As described in Table One above,
5 adding these independent expenditures with the other 33 independent expenditures noted in the
6 October 17, 2007 RFAI, results in 36 independent expenditures totaling \$49,535.15 for which
7 48-Hour Notices were not filed.

8 **3. 24-Hour Notices Stemming from the 2006 Post-General Report**

9 The Committee disclosed two hundred thirty-eight independent expenditures totaling
10 \$150,494.58 on Schedule E of its 2006 30 Day Post-General Report, covering the period from
11 October 19, 2006 through November 27, 2006, but it failed to file 24-Hour Notices for them.
12 See Table One. On October 17, 2007 and July 2, 2008, RAD sent the Committee RFAs with
13 respect to its failure to file notices of these expenditures. The Committee did not address the
14 missing notices with respect to this Report in any subsequent amendments, Form 99s or other
15 written correspondence. The RAD referral, however, describes a July 22, 2008 meeting with
16 RAD and Ms. Sexton. At that meeting, Ms. Sexton acknowledged that the Committee was still
17 unable to accurately and timely disclose independent expenditure notices, and indicated that this
18 problem might continue. She stated that:

19 She was going to propose the implementation of new procedures
20 to ensure that the 24-and 48-Hour Notices and Schedules E and D
21 were reported correctly in the future. She then mentioned that it would
22 still be difficult to accurately and timely report independent expenditures
23 due to the amount of activity and because numerous staff members made
24 the independent expenditures and then had to report the activity to the
25 Committee's national office.
26

27 RAD Referral at 14, Attachment 16.

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1 In response to the notice of referral, Respondents, alluding to the reason given for
2 untimely filing of independent expenditures in the 2004 election cycle that are the subject of
3 MUR 6133, stated that "the Treasurer still did not understand that an 'expenditure' occurred at
4 dissemination of a communication," which resulted in untimely independent expenditure reports.
5 Response at 3. This position is inconsistent with the Committee's Form 99 and to information in
6 the RAD referral, in which the Committee acknowledges that for the 2006 election cycle, it "was
7 aware of the requirements" but failed to comply because its staff did not timely inform the
8 Committee's national office of the independent expenditures. Moreover, most Notices were
9 never filed, while others would have been untimely even if the Committee had filed Notices
10 based on the date that it paid for the expenditure. Therefore, the explanation that the untimely
11 filings were solely attributable to a misunderstanding of the trigger date for filing, is not
12 supported by the facts.

13 **B. Failure to Provide Accurate Supporting Schedules**

14 **1. Overview**

15 In addition to the Committee's failure to file, or timely file, 24-and 48-Hour Notices,
16 RAD identified 175 instances in which the Committee failed to provide accurate information on
17 Schedules D and E of its 2006 12 Day Pre-General, 30 Day Post-General, and Year-End
18 disclosure Reports. *See* 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d) and 104.11. *See also*
19 2 U.S.C. § 434(b)(4)(H)(iii) and 11 C.F.R. § 104.4. In their response to the notification letter,
20 Respondents acknowledged these errors, and pledged to file amended reports to "cure many of
21 these apparent violations."³ *See* Response at 2.

³ On September 28, 2009, Respondents stated by telephone that they will file the amendments in the near future. Subsequently, on November 10, 2009, Respondents stated that complications had prevented them from filing the necessary amendments, but hoped to do so before November 19, 2009. To date, no amendments have been filed.

Table Two below summarizes the Committee's inaccurate reporting that has not yet been corrected in amendments, as discussed in more detail in Sections B.2.b (12 Day Pre-General), B.3.a (30 Day Post-General) and B.4 (Year-End Report), *infra*:

Table Two: Independent Expenditure Reporting Errors

Failure to disclose the candidate name, office sought, state and district	Amended 2006 12 Day Pre-General (5) (\$7,800.30) Amended 2006 30 Day Post-General Report (8) (\$1,818.37)	\$9,618.67
Failure to provide the correct congressional district	Amended 2006 12 Day Pre-General (13) (\$4,306.40) Amended 2006 30 Day Post-General Report (25) (\$11,483.65) Amended 2006 Year End Report (1) (\$148.58)	\$15,938.63
Failure to provide a purpose of disbursement or an adequate purpose of disbursement	Amended 2006 12 Day Pre-General (1) (\$249.60) Amended 2006 30 Day Post-General Report (76) (\$877.88)	\$1,127.48
Failure to clarify independent expenditures on Schedule E that were made after the date of the election	Amended 2006 30 Day Post-General Report (13) (\$826.26) Amended 2006 Year End Report (7) (\$4,472.30)	\$5,298.56
Failure to clarify discrepancies in the date of dissemination disclosed on 24-Hour Notices and Schedule Es	Amended 2006 30 Day Post-General Report (2)	\$1,392.82
Failure to clarify discrepancies in the amounts of 6 independent expenditures disclosed on 24-Hour Notices totaling \$2,785.65 and on Schedule E totaling \$1,822.88	Amended 2006 30 Day Post-General Report (6)	\$962.77 (difference between the amount on the notices (\$2,785.65) and Schedule E (\$1,822.88))
	Total	\$34,338.93

2. 2006 12 Day Pre-General Report Inaccuracies

a. Failure to disclose Independent Expenditures on Schedule E

On October 10, 12, and 18, 2006, the Committee filed four 48-Hour Notices with respect to six independent expenditures totaling \$67,951.49, but did not disclose them on Schedule E of

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1 its 12 Day Pre-General Report, covering the period from October 1, 2006 through October 18,
2 2006, filed on October 26, 2006, or in the amended Report filed on May 2, 2008. On July 2,
3 2008, RAD sent the Committee a RFAI noting that the independent expenditures at issue were
4 not reflected on Schedule E of the May 2, 2008 amended Report, and requested further
5 clarification. The Committee's August 4, 2008 Amended 12 Day Pre-General Report did not
6 provide the requested clarification. In an August 6, 2008, phone conversation with RAD, Ms.
7 Sexton stated that "she was in the process of matching the Schedule Es and notices in a
8 spreadsheet, and that she would send it when completed." RAD Referral at 9. Subsequently, on
9 September 17, 2008, the Committee submitted a Form 99 attempting to link the expenditures
10 from the notices with expenditures on Schedule E of the relevant Report. *Id.* However, the
11 referenced expenditures on Schedule E disclosed different dissemination dates, and were already
12 clearly linked to other 48-Hour Notices that were filed. *Id.* To date, the Committee has not
13 clarified the discrepancies.

14 **b. Incomplete Independent Expenditure Reporting**

15 Each independent expenditure disclosure on Schedule E must include, among other
16 things, the name and address of each person who receives a disbursement from the individual in
17 connection with the independent expenditure, along with the date, amount, and purpose of any
18 such independent expenditure, and a statement that indicates whether such expenditure is in
19 support of, or in opposition to, a candidate, as well as the name and office sought by the
20 candidate. See 2 U.S.C. §§ 434(b)(6)(B)(iii) and 434(c)(2)(A). With respect to some
21 independent expenditures disclosed on Schedule E of its first 2006 Amended 12 Day Pre-
22 General Report, the Committee failed to include required information. The Committee disclosed
23 incorrect congressional districts when identifying the offices sought by candidates for thirteen

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1 independent expenditures totaling \$4,306.40 made on behalf of ten federal candidates, and
2 omitted the candidate's name eight times in independent expenditures totaling \$8,602.58. The
3 Committee also failed to describe the purpose of its October 12, 2006, independent expenditure
4 made on behalf of Dennis Rehberg in the amount of \$249.60. RAD Referral at Attachment 12.
5 After receiving RAD's October 17, 2007, and July 2, 2008, RFAs with respect to these
6 omissions, the Committee filed another Amended 2006 12 Day Pre-General Report on August 4,
7 2008. While this amendment decreased the number of independent expenditures missing a
8 candidate's name from eight to five totaling \$7,800.30, it did not address the remaining three
9 omitted names, the incorrect candidate districts or the missing purpose for the aforementioned
10 independent expenditure. RAD Referral at 8.

11 **3. 2006 30 Day Post-General Report Inaccuracies**

12 **a. Incomplete Independent Expenditure Reporting**

13
14 On December 8, 2006, the Committee filed its initial 2006 30 Day Post-General Report,
15 covering the period from October 19, 2006 through November 27, 2006. On October 17, 2007,
16 RAD sent the Committee an RFA, informing it of discrepancies and omissions with respect to
17 its independent expenditure reporting on this Report. Generally, RAD asked the Committee to
18 amend its Report to: disclose the name, office sought, state and district of a federal candidate;
19 provide the correct congressional district information for several candidates; and clarify its
20 description of certain independent expenditures.

21 The Committee's March 11, 2008, amendment to this Report corrected some of the
22 inaccuracies, as it reduced the number of independent expenditures with inadequate purposes of
23 disbursement from 310 totaling \$94,823.81 to 83 totaling \$16,520.66. Further, the amended
24 Report reduced the amount of independent expenditures made after the 2006 General Election

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1 that did not appear to be debt payments to \$8,589.86, from \$72,906. *Id.* at 12. However, the
2 number of entries missing the candidate's name remained at eight, and the amendment increased
3 the total amount of the associated independent expenditures to \$1,818.37, from \$765.41.
4 Additionally, in the amendment, the number of independent expenditures with incorrect
5 congressional districts increased to 25 from 22, totaling \$11,483.65, from \$8,768. *Id.* at 12.

6 On July 2, 2008, RAD sent the Committee another RFAI, asking, among other things, for
7 clarification regarding the independent expenditures on Schedule E with dates or amounts that
8 did not correspond to the dates and amounts on its 24-Hour Notices. The Committee's most
9 recent Amended 2006 30 Day Post-General Report, filed August 4, 2008, decreased the number
10 of independent expenditures with inadequate purposes to 76 totaling \$877.88, and decreased the
11 number of independent expenditures made after the date of the 2006 General Election to 13
12 totaling \$826.26. The Committee did not correct other independent expenditures with
13 inadequate purposes, missing candidates' names, and incorrect congressional districts, and did
14 not correct or clarify the discrepancies in dates and amounts between the independent
15 expenditures reported on 24-Hour Notices and on Schedule E.

16 In sum, the Committee failed to disclose the name of the candidate supported or opposed
17 as well as the candidate's office sought, state and district, where applicable, for eight
18 independent expenditures totaling \$1,818.37; disclosed incorrect congressional districts when
19 identifying the office sought for 25 independent expenditures to congressional candidates
20 totaling \$11,483.65; failed to provide an adequate purpose of disbursement for 76 independent
21 expenditures totaling \$877.88; failed to clarify 13 independent expenditures totaling \$826.26 that
22 were made after the date of the 2006 General Election and which did not appear to be debt
23 payments for previously reported expenditures; and disclosed two independent expenditures

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1 totaling \$1,392.82 with dissemination dates that were different than the dissemination dates
2 disclosed on the 24-Hour Notices.⁴ RAD Referral at 10, Attachments 10-14. The Committee
3 also failed to clarify six independent expenditures with amounts on Schedule E that differed from
4 the amounts on the corresponding 24-Hour Notices by a total of \$962.77. *Id.*, Attachment 15.

5 **b. Debt Reporting**

6 RAD's RFAs to the Committee on October 17, 2007, February 8, 2008, April 2, 2008,
7 and July 2, 2008 also requested that the Committee clarify discrepancies in its reporting of debts
8 on its 2006 30 Day Post-General Report. The Committee's March 11, 2008, May 2, 2008, and
9 August 4, 2008 amendments to the Report, however, did not clarify inaccuracies relating to debts
10 disclosed on Schedule D supporting Line 10 of the Summary Page, debt payments on a
11 disbursement schedule that did not correspond to Schedule D payment entries, and other debt
12 entries on Schedule D that did not correspond to Schedule E entries. As a result, the Referral
13 references eight instances, collectively totaling \$10,408.84, that reflect inaccurate debt reporting.
14 Specifically, the Committee failed to provide memo entries on Schedule Es disclosing the date of
15 dissemination of three independent expenditures totaling \$3,414.16, for which debts were
16 disclosed on Schedule D supporting Line 10 (Debts and Obligations Owed by the Committee) of
17 the Summary Page of the Amended 2006 30 Day Post-General Report. RAD Referral at 15,
18 Attachment 7. The Committee also failed to disclose two debt payments totaling \$1,861.02 on
19 Schedule B to correspond to the Schedule D debt payment entries. *Id.* In addition, the
20 Committee failed to disclose debt entries on Schedule D corresponding to three memo entries on
21 Schedule E for independent expenditures totaling \$5,133.66. RAD Referral at 15, Attachment 8.

⁴ RAD stated in its October 17, 2007 RFAI that the Committee must amend Schedule E to include a brief statement describing why expenditures were made, as its description of "GOTV" for certain independent expenditures were inadequate. See 11 C.F.R. § 104.3 (b)(3)(i)(B) (get-out-the-vote would not meet the requirements for reporting the purpose of an expenditure).

1 Further, on Schedule D of its most recent Amended 2006 30 Day Post-General Report
2 filed August 4, 2008, the Committee disclosed two debts owed to EU Services, with opening
3 balances totaling \$50,245.84. However, the Committee did not reflect these debts as outstanding
4 ending balances on Schedule D of the prior Amended 2006 12 Day Pre-General Report, also
5 filed on August 4, 2008. RAD Referral at 15, Attachment 9. Conversely, the Committee
6 disclosed two other debts on Schedule D owed to this vendor totaling \$40,141.15 as outstanding
7 ending balances on the Amended 2006 12 Day Pre-General Report, without disclosing the
8 opening balances for these debts on Schedule D to the Amended 2006 30 Day Post-General
9 Report.⁵ *Id.*

10 4. 2006 Year-End Report Inaccuracies

11 On January 31, 2007, the Committee filed its initial 2006 Year-End Report, covering the
12 period from November 28, 2006 through December 31, 2006. In this Report and its
13 May 2, 2008 and August 4, 2008, amendments, the Committee disclosed an incorrect
14 congressional district for one independent expenditure made to a congressional candidate in the
15 amount of \$148.58. *Id.* at 16. Additionally, the Committee failed to clarify seven independent
16 expenditures totaling \$4,472.30 on Schedule E of this Report and amendments, which were
17 reportedly made after the date of the 2006 General Election and did not appear to be debt
18 payments for expenditures previously disclosed. As early as its RFAI on October 17, 2007,
19 RAD referenced these discrepancies, which the Committee did not clarify on its most recent

⁵ RAD did not send a RFAI after the Committee filed its last Amended 2006 30 Day Post-General Report dated August 4, 2008, and had advised the Committee in its July 2008 RFAI that it would not receive an additional notice from the Commission on this matter. Subsequently, RAD advised the Committee by telephone on September 12, 2008, that a referral to Enforcement was being written regarding issues relating to its 2006 disclosure reports. RAD, however, allowed the Committee the opportunity to provide additional information by September 17, 2008, but it did not do so. RAD Referral at 5. Respondents' September 16, 2009 response to the notice of referral notification letter subsequently acknowledged these errors and stated that it would amend the appropriate reports. *See also* footnote 3, *supra*.

August 4, 2008 amendment to the 2006 Year-End Report, or in any further communication to

RAD. See footnote 5, *supra*.

C. Conclusion

Based on the above, we recommend the Commission find reason to believe National
Right to Life Political Action Committee and Carol Tobias, in her official capacity as treasurer,
violated 2 U.S.C. §§ 434(b) and 434(g).

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V. RECOMMENDATIONS


1. Open a Matter Under Review with respect to RR 09L-07;
2. Find reason to believe that National Right to Life Political Action Committee and Carol Tobias, in her official capacity as treasurer, violated 2 U.S.C. § 434(b);
3. Find reason to believe that National Right to Life Political Action Committee and Carol Tobias, in her official capacity as treasurer, violated 2 U.S.C. § 434(g);
- 4.
- 5.
6. Approve the attached Factual and Legal Analysis; and
7. Approve the appropriate letter.

Thomasenia P. Duncan
General Counsel

Date

12-7-09

BY:


Kathleen M. Guith
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